



1300 I Street, NW, Suite 400 West
Washington, DC 20005

Phone 202 515-2540
Fax 202 336-7922
tamara.preiss@verizon.com

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Ex Parte

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: WT Docket No. 10-133; WT Docket No. 05-265; RM-11592

Dear Ms. Dortch:

MetroPCS's recent letter to the Commission on its broadband data offerings¹ provides additional information relevant to several other proceedings pending before the Commission. In brief, the letter confirms that the Commission should find that effective competition exists in the wireless industry, and that it should reject requests that it intrude into this intensely competitive industry by regulating data roaming agreements and the technical design of wireless devices.

1. The Commission is currently developing its next annual report to Congress on wireless competition.² The record in that proceeding contains extensive facts and data showing that the wireless sector, as well as all input and downstream segments, are not only effectively competitive, but that competition is intensifying and is providing wireless consumers with ever-expanding choices.³

The MetroPCS Letter underscores these facts. MetroPCS repeatedly points to the "highly competitive" wireless business.⁴ It notes that it has grown to become the fifth largest facilities-based wireless provider, has expanded into numerous new markets, and "was able to succeed in this highly competitive market against entrenched incumbents by developing and marketing a differentiated wireless service."⁵ MetroPCS's "success with these offerings and customer demand for web services ultimately led MetroPCS to bring its 4G LTE offering to the wireless market. . . . Consequently, MetroPCS became the first broadband carrier in the U.S. to launch a commercial 4G LTE service. To do so, MetroPCS offered the world's first commercially available 4G LTE enabled feature phone. . . ."⁶ MetroPCS notes that it currently offers its LTE

¹ Letter to Chairman Julius Genachowski, FCC, from Carl Northrop, Counsel for MetroPCS, GN Docket No. 09-191 (filed Feb. 14, 2011) ("MetroPCS Letter").

² *Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, including Commercial Mobile Services*, WT Docket No. 10-133, Public Notice, 25 FCC Rcd 8416 (WTB, rel. June 30, 2010).

³ See, e.g., Comments of CTIA-The Wireless Association, WT Docket No. 10-133 (filed July 30, 2010).

⁴ MetroPCS Letter at 2, 4.

⁵ *Id.* at 2.

⁶ *Id.* at 3-4.

service in 14 major markets across the country and plans to expand to additional areas throughout 2011.⁷

These facts buttress the voluminous data already in the record about the growth of new carriers, including not only MetroPCS but also Leap, Clearwire, Cox, Tracfone and others. What MetroPCS has accomplished – bringing innovative products and price plans to the market – is the hallmark of robust competition. The Commission, if it is to be faithful to its commitment to data-driven decisions, cannot fail to conclude in its next report to Congress that the wireless market is effectively competitive.

2. The Commission is also considering whether to adopt a data roaming mandate.⁸ The record, however, demonstrates that wireless carriers are achieving wide and even nationwide coverage through negotiated data roaming agreements, rendering any regulatory intervention unwarranted. Moreover, as Verizon Wireless pointed out, the ever-increasing availability of Wi-Fi enabled devices and hot spots, which provide customers Internet connectivity and access to email, is an alternative to data roaming.⁹ The proliferation of Wi-Fi-enabled devices and Wi-Fi hot spots enables wireless customers to access data services when they travel outside their home markets, even where the carrier may not have a data roaming agreement in place. Wi-Fi is thus another example of how market forces have worked to ensure mobile access to data services.

MetroPCS's letter confirms the growing availability of Wi-Fi. Specifically, MetroPCS notes that all of its LTE phones are Wi-Fi enabled, and two of its devices come pre-loaded with a client that enables users easily to identify Wi-Fi hot spots that are available to the customer.¹⁰ MetroPCS and many of its independent resellers offer free Wi-Fi hot spots at retail locations, and there are thousands of Wi-Fi hot spots available throughout the United States. MetroPCS states that any of its LTE customers on any of its rate plans can “enjoy all of the unlimited Multimedia Streaming using Wi-Fi that their chosen handset is capable of displaying.”¹¹

As MetroPCS indicates, it relies on Wi-Fi to provide access to Internet content to its customers whether those customers are in their home or visited markets. Indeed, depending on how MetroPCS's roaming agreements are provisioned, Wi-Fi connectivity may be the only way for some MetroPCS customers to obtain access to multimedia streaming content when they roam. Accordingly, MetroPCS's recent letter demonstrates that Wi-Fi is an alternative to data roaming for customers when they travel.

3. Finally, several 700 MHz licensees filed a petition requesting that the Commission commence a rulemaking to force all 700 MHz licensees to include all paired 700 MHz spectrum

⁷ *Id.* at 4.

⁸ *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, Order on Reconsideration and Second Further Notice of Proposed Rulemaking, 25 FCC Rcd 4181 (2010).

⁹ Letter to Marlene H. Dortch, Secretary, FCC, from Tamara Preiss, Verizon, WT Docket No. 05-265 (filed Nov. 5, 2010).

¹⁰ MetroPCS Letter at 10.

¹¹ *Id.*

bands in their devices.¹² Verizon Wireless and others have filed extensive information in response to this petition demonstrating that it is legally untenable, technically flawed, and would impose substantial technical burdens and costs on 700 MHz licensees. Verizon Wireless and others pointed out that the competitive market would drive device manufacturers to develop devices to work on various spectrum bands.

Facts in the record confirm that devices are indeed being developed without government intrusion. For example, one of the petitioners seeking a device mandate, Cellular South, announced that it had entered into a substantial agreement with Samsung to build its A Band 700 MHz network and supply it with devices capable of operating on A Band spectrum.¹³ MetroPCS's recent letter notes that it, too, successfully worked with Samsung to design and build LTE devices that worked in MetroPCS's particular spectrum bands.¹⁴ MetroPCS's situation was more difficult than that of 700 MHz licensees because, as its letter explains, it needed to procure devices that provided LTE not in the 700 MHz band but in the PCS band, and to do so with far less spectrum bandwidth available to it. Despite these hurdles – hurdles greater than those faced by the petitioning licensees – MetroPCS was not only able to procure devices that met its unique needs for LTE but to be the first wireless provider to launch LTE and to offer the first LTE handset.

The 700 MHz licensees that seek an equipment mandate have alleged that Verizon Wireless collaborates with device manufacturers to withhold new equipment from smaller carriers. It is apparent, however, that Samsung, which supplies equipment to Verizon Wireless, has worked with smaller carriers to meet their unique equipment needs.

These new facts make it abundantly clear that there is no basis for the Commission to entertain requests that it dictate to wireless manufacturers and providers which spectrum bands must be built into devices. The device market, like all other sectors of the wireless industry, has been and continues to be robustly competitive, and offers consumers ever more choices every day. In this market, calls for government regulation can and should be rejected.

Sincerely,



cc: Ruth Milkman
Jim Schlichting

¹² Petition for Rulemaking Regarding the Need for 700 MHz Mobile Equipment to be Capable of Operating on All Paired Commercial 700 MHz Frequency Blocks, RM-11592 (filed Sept. 29, 2009).

¹³ Letter to Marlene H. Dortch, Secretary, FCC, from Tamara Preiss, Verizon, RM-11592 (filed Dec. 1, 2010).

¹⁴ MetroPCS Letter at 4, 10.